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1 ROB BONTA
 Attorney General of California
 2 DAVID A. ZONANA
 Supervising Deputy Attorney General
 3 SOMERSET PERRY, SBN 293316
 HEATHER M. LEWIS, SBN 291933
 4 Deputy Attorneys General
 1515 Clay Street, 20th Floor
 5 P.O. Box 70550
 Oakland, CA 94612-0550
 6 Telephone: (510) 879-0852
 Fax: (510) 622-2270
 7 E-mail: Somerset.Perry@doj.ca.gov
Attorneys for Plaintiffs

9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 **CALIFORNIA DEPARTMENT OF**
 14 **TOXIC SUBSTANCES CONTROL**
 15 **and CALIFORNIA TOXIC**
 16 **SUBSTANCES CONTROL**
 17 **ACCOUNT,**

Plaintiffs,

18 v.

19 **ROBERT C. FROJEN AND**
 20 **COLEEN FROJEN TRUST,**
 21 **COLLEEN FROJEN, individually**
 22 **and as trustee on behalf of the**
 23 **ROBERT C. FROJEN AND**
 24 **COLLEEN FROJEN TRUST,**
 25 **ROBERT WINTERS, an individual,**
 26 **and PCA METAL FINISHING, INC.,**
 27 **a dissolved California corporation,**

Defendants.

Case No. 8:22-cv-01272 DSF (KESx)

CONSENT DECREE BETWEEN
 PLAINTIFFS AND DEFENDANTS
 COLLEEN FROJEN, individually and
 as trustee on behalf of the ROBERT C.
 FROJEN AND COLLEEN FROJEN
 TRUST, ROBERT WINTERS, an
 individual, and PCA METAL
 FINISHING, INC., a dissolved
 California corporation.

28 **I. INTRODUCTION**

1. Concurrently with the lodging of this Consent Decree, Plaintiffs the State
 of California Department of Toxic Substances Control ("DTSC") and the Toxic

1 Substances Control Account (collectively, “Plaintiffs”) are filing a complaint in this
2 matter pursuant to the Comprehensive Environmental Response, Compensation,
3 and Liability Act (“CERCLA”), 42 U.S.C. § 9601 et seq. (“Complaint”) against
4 Defendants the Robert C. Frojen and Collen Frojen Trust and affiliated sub-trusts
5 (collectively, “Frojen Trust”),¹ Colleen Frojen, as an individual and as trustee of the
6 Frojen Trust, Robert Winters, and PCA Metal Finishing, Inc. (“PCA”) as defined
7 below (hereinafter collectively “Settling Defendants”). In the Complaint, Plaintiffs
8 seek to recover costs they incurred responding to releases and/or threatened releases
9 of hazardous substances at or from the property located at 1711, 1723, and 1725 E.
10 Kimberly Avenue, Fullerton, California 92831 and 1700, 1702, 1704, 1706, 1710,
11 1712, 1718, 1720, 1724, and 1726 E. Rosslynn Avenue, Fullerton, CA 92831,
12 identified by Assessor’s Parcel Number 033-270-30 (“the Site”). Plaintiffs also
13 seek a declaratory judgment under CERCLA section 113(g)(2), 42 U.S.C. §
14 9613(g)(2), that each Defendant is jointly and severally liable to Plaintiffs for the
15 response costs Plaintiffs have incurred, and for any further response costs Plaintiffs
16 incur in the future as a result of any release or threatened release of a hazardous
17 substance at the Site.

18 2. In the Complaint, Plaintiffs allege, in relevant part, the following:

- 19 a. The Site is located in Fullerton, California.
- 20 b. Settling Defendant Frojen Trust has owned the site since 2001.
- 21 c. Settling Defendant Colleen Frojen individually held an ownership
22 interest in the Site from approximately 1978 to 2001.
- 23 d. From approximately 1980 to 2007, PCA operated as a metal
24 plating facility on the eastern portion of the Site. In the plating

25 ¹ The Robert C. Frojen and Collen Frojen Trust and affiliated sub-trusts are:
26 the Frojen Family Trust UDT October 19, 2000, aka the Robert C. Frojen and
27 Colleen Frojen Trust dated October 19, 2000; the Robert C. Frojen and Colleen
28 Frojen Trust (Marital Share) dated October 19, 2000; the Robert C. Frojen and
Colleen Frojen Trust (Bypass Share) dated October 19, 2000; the Robert C. Frojen
and Colleen Frojen Trust (Survivor’s Share) dated October 19, 2000.

1 operations at the Site, PCA used hexavalent chromium, cadmium,
2 cyanide compounds, tetrachloroethene (“PCE”), and
3 trichloroethene (“TCE”).

4 e. Settling Defendant Robert Winters was an owner of PCA from
5 approximately 1997 to 2014.

6 f. From approximately 1976 to 2011, Orange County Metal
7 Processing (“OCMP”) operated as a metal plating business on the
8 western portion of the Site. OCMP was owned and operated by
9 Manuel Reynoso. DTSC filed a complaint against Mr. Reynoso in
10 this Court for recovery of response costs on January 26, 2022
11 (Case No. 8:22-cv-00136-DSF-KES).

12 g. DTSC conducted inspections of the Site on August 10, 2007 and
13 September 20, 2007.

14 h. On May 24, 2012, DTSC issued an Imminent and/or Substantial
15 Endangerment Determination for PCA, finding that hazardous
16 substances had been released and were present in the groundwater
17 and soil at the Site in sufficient concentrations to pose a
18 substantial danger to public health and the environment.

19 i. On May 28, 2015, DTSC approved a Feasibility Study / Remedial
20 Action Plan (“FS/RAP”) for the Site.

21 j. From 2015 to present, DTSC has implemented the remedial
22 actions identified in the FS/RAP, including soil excavation,
23 installation of pilot-scale systems of an in-situ chemical oxidation
24 system for treating groundwater, soil vapor extraction, and
25 subsequent monitoring.

26 3. DTSC took response actions necessary to remove and remedy the
27 hazardous substances released and/or threatened to be released at and from the Site.
28 DTSC’s response actions included, but were not limited to, the following activities:

1 investigations of contamination at the Site; preparation and implementation of the
2 FS/RAP; enforcement/cost recovery activities; oversight; public participation; and
3 compliance with the California Environmental Quality Act. DTSC's response
4 actions were not inconsistent with the National Contingency Plan, 40 C.F.R. Part
5 300.

6 4. As of December 2021, DTSC's unreimbursed response costs related to
7 the Site are approximately \$8.3 million. These unreimbursed costs include
8 approximately \$4.2 million for eastern portion of the Site where PCA operated, and
9 approximately \$4.1 million for the western portion of the Site where OCMP
10 operated.

11 5. Settling Defendants have claimed inability to pay response costs and
12 submitted financial information for DTSC's review. Settling Defendants affirm
13 under penalty of perjury that the financial information provided to DTSC is true and
14 correct. In making this determination of Settling Defendants' finances and in
15 entering into this settlement, DTSC has relied on the financial information provided
16 by Settling Defendants.

17 6. Plaintiffs and Settling Defendants (collectively, the "Parties") agree, and
18 this Court, by entering this Consent Decree, finds, that: this Consent Decree has
19 been negotiated by the Parties in good faith; settlement of this matter will avoid
20 expensive, prolonged, and complicated litigation between the Parties; and that this
21 Consent Decree is fair, reasonable, in the public interest, and consistent with the
22 purpose of CERCLA.

23 **THEREFORE**, the Court, with the consent of the Parties to this Consent
24 Decree, hereby **ORDERS, ADJUDGES, AND DECREES**, as follows:

25 **II. JURISDICTION**

26 7. This Court has subject matter jurisdiction over this action pursuant to 28
27 U.S.C. § 1331, and § 113(b) of CERCLA, 42 U.S.C. § 9613(b). The Court also has
28 supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367,

1 because these state law claims form part of the same case or controversy as DTSC's
2 federal law claims in that the state and federal claims arise from common facts
3 relating to release of hazardous substances and the cleanup of contamination at the
4 Site. The Court has personal jurisdiction over each of the parties to this Consent
5 Decree. Venue is proper in this district under 28 U.S.C. § 1391(b) and § 113(b) of
6 CERCLA, 42 U.S.C. § 9613(b).

7 8. Solely for the purposes of this Consent Decree and the underlying
8 Complaint, Settling Defendants waive all objections and defenses that Settling
9 Defendants may have to the jurisdiction of the Court or to venue in this district.
10 Settling Defendants consent to, and shall not challenge, the terms of this Consent
11 Decree and this Court's jurisdiction to enter and enforce this Consent Decree.

12 9. The Court shall retain jurisdiction over this matter for the purpose of
13 interpreting and enforcing the terms of this Consent Decree if necessary.

14 **III. SETTLEMENT OF DISPUTED CLAIMS**

15 10. This Consent Decree resolves Plaintiffs' claims against Settling
16 Defendants in the above-captioned action. Plaintiffs agree to settlement of Settling
17 Defendants' liability in this action in exchange for consideration from Settling
18 Defendants, including payment by Settling Defendants to reimburse a portion of
19 Plaintiffs' Response Costs incurred and to be incurred at, or in connection with,
20 releases and threatened releases of hazardous substances at the Site. The Parties'
21 mutual releases of liability and the consideration for those releases are set forth
22 herein in detail below.

23 11. Nothing in this Consent Decree shall be construed as an admission by
24 Settling Defendants of any issue of law or fact or of any violation of law. Except as
25 otherwise provided by this Consent Decree, this Consent Decree shall not prejudice,
26 waive, or impair any right, remedy, or defense that Settling Defendants may have in
27 other or further legal proceeding.
28

1 12. Upon approval and entry of this Consent Decree by the Court, this
2 Consent Decree shall constitute a final judgment between the Parties.

3 **IV. DEFINITIONS**

4 13. Unless otherwise expressly provided herein, terms used in this Consent
5 Decree that are defined in CERCLA, or in regulations promulgated under CERCLA
6 shall have the meaning assigned to them therein. Whenever terms listed below are
7 used in this Consent Decree, the definitions below shall apply.

8 14. “Day” shall mean a calendar day. In computing any period of time under
9 this Consent Decree, where the last day would fall on a Saturday, Sunday or federal
10 or State holiday, the period shall run until the close of business of the next day that
11 is not a Saturday, Sunday or federal or State holiday.

12 15. “DTSC” or “Department” shall mean the California Department of Toxic
13 Substances Control, and its predecessor and successor agencies. DTSC is a public
14 agency of the State of California organized and existing under and pursuant to
15 California Health and Safety Code § 58000 *et seq.* Under California law, DTSC is
16 the state agency responsible for determining whether there has been a release and/or
17 threatened release of hazardous substances into the environment, and for
18 determining the actions to be taken in response thereto. DTSC is the California state
19 agency with primary jurisdiction over the response to the release and threatened
20 release of Hazardous Substances at, in, or from the Site. For the purposes of access
21 to the Site or the Property, it shall include any contractors or subcontractors or other
22 persons doing response work for or on behalf of DTSC.

23 16. “Effective Date” shall mean the day on which the Court enters an order
24 approving this Consent Decree.

25 17. “Fair Market Value” shall mean the highest price on the date of valuation
26 of the Property that would be agreed to by a seller, being willing to sell but under
27 no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being
28 ready, willing, and able to buy but under no particular necessity for so doing, each

1 dealing with the other with full knowledge of all the uses and purposes for which
2 the property is reasonably adaptable and available.

3 18. "Frojen Trust" shall mean the Robert C. Frojen and Collen Frojen Trust
4 and affiliated sub-trusts, including: the Frojen Family Trust UDT October 19, 2000,
5 aka the Robert C. Frojen and Colleen Frojen Trust dated October 19, 2000; the
6 Robert C. Frojen and Colleen Frojen Trust (Marital Share) dated October 19, 2000;
7 the Robert C. Frojen and Colleen Frojen Trust (Bypass Share) dated October 19,
8 2000; the Robert C. Frojen and Colleen Frojen Trust (Survivor's Share) dated
9 October 19, 2000.

10 19. "Hazardous Materials" shall have the same meaning as the term is
11 defined in California Health and Safety Code section 25260, subdivision (d).

12 20. "Land Use Covenant" shall means a covenant made by the owner of land
13 or by the grantee of land, due to the presence of Hazardous Materials on the land, to
14 do or refrain from doing some act on the land and which shall meet the
15 requirements of California Civil Code section 14 1.

16 21. "Net Sale Proceeds" shall mean the gross price for which the Property is
17 sold pursuant to this Consent Decree, less commercially reasonable brokerage
18 commissions, closing costs, and marketing expenses.

19 22. "Parties" shall mean DTSC, the Toxic Substances Control Account, and
20 Settling Defendants, and each shall be a "Party."

21 23. "PCA Metal Finishing, Inc.," shall mean PCA Metal Finishing, Inc., and
22 the following entities: PCA Metal Finishing, Inc., a subsidiary of Pacific Clark Aiken
23 Corporation, a California corporation; PCA Metal Finishing, Inc., a subsidiary of PCA
24 Aerospace, Inc., a California corporation, PCA Metal Finishing Inc., dba Pacific Clark
25 Aiken Corporation Metal Finishing Division, a California corporation; and any and all
26 successors and assigns thereto. PCA Metal Finishing, Inc. is a dissolved California
27 corporation.
28

1 24. "Property" shall mean the real property located at 1711, 1723, and 1725 E.
2 Kimberly Avenue, Fullerton, California 92831 and 1706, 1710, 1712, 1720, 1724, and
3 1726 E. Rosslynn Avenue, Fullerton, CA 92831, identified by Assessor's Parcel
4 Number 033-270-30. The Property is currently owned by the Frojen Trust.

5 25. "Response Costs" shall mean all costs of "removal," "remedial action,"
6 or "response" as those terms are defined by section 101 of CERCLA, 42 U.S.C. §
7 9601, related to release and/or threatened release of hazardous substances at,
8 beneath, and/or from the Site, including in the soils and groundwater. Response
9 Costs include, but are not limited to, direct labor costs; contractor, consultant, and
10 expert costs; travel and any other out-of-pocket expenses; the costs of identifying,
11 developing evidence against, and pursuing claims against persons or entities liable
12 for the release or threatened release of hazardous substances at, in, or from the Site;
13 indirect costs; oversight costs; applicable interest charges; and attorneys' fees
14 incurred by DTSC.

15 26. "Settling Defendants" shall collectively include the Frojen Trust, Colleen
16 Frojen, individually and as Trustee of the Frojen Trust, Robert H. Winters, and
17 PCA Metal Finishing, Inc.

18 27. "Site" shall mean the Property and the vertical and areal extent of the
19 hazardous substances contamination, including contamination of surface,
20 subsurface areas, and groundwater, that is, or has been, present at, beneath, and/or
21 from the Property.

22 28. "Toxic Substances Control Account" shall mean the Toxic Substances
23 Control Account, or "State Account," which is an account within the State of
24 California General Fund, established pursuant to section 25173.6 of the California
25 Health and Safety Code. Cal. Health & Saf. Code, §§ 25324, 25173.6. The Director
26 of the Department administers the State Account. The State Account may sue in its
27 own name (Cal. Health & Saf. Code, § 25331), and shall be a party in any action for
28

1 recovery of costs or expenditures incurred from the state account pursuant to the
2 Hazardous Substances Account Act. Cal. Health & Saf. Code, § 25361(a).

3 **V. SETTLING DEFENDANTS' OBLIGATIONS**

4 29. Settling Defendants Frojen and Frojen Trust shall pay Plaintiffs
5 \$2,000,000 within ninety (90) Days of the Effective Date. Settling Defendants
6 Winters and PCA Metal Finishing, Inc. shall pay Plaintiffs \$1,000,000 within
7 ninety (90) Days of the Effective Date.

8 30. Settling Defendants represent and warrant that there or no liens or
9 outstanding encumbrances on the Property.

10 31. The Parties agree that the Property is a valuable asset for the purposes of
11 addressing Settling Defendants' liability for Plaintiffs' Response Costs. Settling
12 Defendant Frojen, as trustee of the Frojen Trust, shall have one (1) year from the
13 Effective Date ("Sales Opportunity Period") to close the sale of the Property and
14 shall pay Plaintiffs the Net Sale Proceeds for the sale of the Property, pursuant to
15 the following requirements:

- 16 a. Net Sale Proceeds shall mean the gross price for which the
17 Property is sold pursuant to this Consent Decree, less
18 commercially reasonable brokerage commissions, closing costs,
19 and marketing expenses.
- 20 b. Settling Defendant Frojen as trustee of the Frojen Trust shall use
21 commercially reasonable efforts to sell the Property for Fair
22 Market Value and shall incur only commercially reasonable costs
23 of sale for the sale of the Property.
- 24 c. Any purchase agreement and escrow instructions for the sale of
25 the Property shall require the escrow agent to pay Plaintiffs all of
26 the Net Sale Proceeds within three (3) Days of the close of
27 escrow.
28

- 1 d. Within ten (10) Days of the close of escrow, Settling Defendant
2 Frojen as trustee of the Frojen Trust shall provide DTSC with the
3 Seller's final settlement statement. Within thirty (30) Days of the
4 close of escrow, Settling Defendant as trustee of the Frojen Trust
5 shall provide DTSC with a signed report setting forth a cash-
6 based accounting of the calculation of the Net Sale Proceeds, i.e.,
7 showing the gross sale price, and each item deducted from same
8 in calculating the Net Sale Proceeds.
- 9 e. Following the close of escrow, within ten (10) Days of a written
10 request by DTSC, Settling Defendant Frojen as trustee of the
11 Frojen Trust shall provide all supporting documentation for the
12 sale, the purchase and escrow documents and the escrow
13 settlement statement to enable DTSC to audit and verify the sale
14 transaction.
- 15 f. Provided Settling Defendant Frojen as trustee of the Frojen Trust
16 makes commercially reasonable efforts to sell the Property during
17 the Sales Opportunity Period but does not sell the Property,
18 DTSC will consider, in good faith, an extension of time to
19 effectuate the terms of this Consent Decree provided there is no
20 bona fide offer for purchase of the Property during the Sales
21 Opportunity Period.
- 22 g. After the Effective Date of the Consent Decree, Settling
23 Defendant Frojen as trustee of the Frojen Trust, upon request of
24 DTSC, will execute and record, or cause to be executed and
25 recorded by any purchaser of the Property, a Land Use Covenant
26 (substantially in the form attached as Exhibit A) that may, among
27 other things: (a) limit use of the Property to commercial or
28 industrial uses, unless additional response action is taken at the

1 Property with the approval of DTSC that would allow for
2 additional uses of the Property from a public health perspective;
3 and (b) protect against interference with any ongoing DTSC
4 response actions at the Site. Settling Defendant Frojen as trustee
5 of the Frojen Trust and any subsequent owners of the Property
6 may request that DTSC agree to a modification of the Land Use
7 Covenant. Neither the Settling Defendant, nor any subsequent
8 owners, may modify the Land Use Covenant without prior DTSC
9 written approval. Nothing in this Consent Decree is intended nor
10 shall it excuse Settling Defendant Frojen as trustee of the Frojen
11 Trust or any other person from obtaining any permits or other
12 authorizations from any other governmental authority to use the
13 Property. If Settling Defendant Frojen as trustee of the Frojen
14 Trust sells the property during the Sales Opportunity Period, but
15 prior to any request by DTSC to record a Land Use Covenant,
16 Settling Defendant Frojen as trustee of the Frojen Trust shall
17 include a provision in the terms of sale of the Property, obligating
18 the potential purchaser or transferee to record a Land Use
19 Covenant upon request of DTSC, in substantially similar form
20 attached as Exhibit B, and with substantially similar terms.

- 21 h. In the event that Property is not sold within the time period
22 specified in Paragraph 31 and as extended upon agreement by
23 DTSC as provided in Paragraph 31(f) Settling Defendant Frojen
24 as trustee of the Frojen Trust shall pay Plaintiffs an additional
25 \$7,000 per month until the Property is sold, unless Settling
26 Defendant Frojen as trustee of the Frojen Trust can demonstrate,
27 via motion, that the delay in the sale of the Property past the time
28 period specified in Paragraph 31 and 31(f), supra, was due to

1 circumstances beyond Settling Defendant's control and that
 2 Settling Defendant Frojen as trustee of the Frojen Trust took
 3 commercially reasonable steps to sell the Property at Fair Market
 4 Value. Upon such showing, the Court may extend the deadline
 5 for the sale of the Property.

6 32. Each Settling Defendant's payment obligations under this Consent
 7 Decree shall be deemed to have been satisfied in full upon delivery to Plaintiffs of
 8 the payments due under Paragraphs 29 and 31.

9 33. The payments specified in Paragraphs 29 and 31 shall be made by
 10 certified or cashier's check made payable to California Department of Toxic
 11 Substance Control, and shall bear on its face both the docket number of this
 12 proceeding and the phrase "Site Codes 401605-17 and 401614-17."

13 a. The payments shall be sent to:
 14 Accounting Office, MS-21A
 15 Department of Toxic Substances Control
 16 P.O. Box 806
 17 Sacramento, CA 95812-0806

18 b. A copy of the check shall be mailed to:
 19 Christopher Kane
 20 Senior Staff Counsel
 21 Department of Toxic Substances Control
 22 Office of Legal Counsel, MS-23A
 23 1001 I Street
 24 Sacramento, CA 95814

25 And e-mailed to Christopher.Kane@dtsc.ca.gov in PDF format.

26 34. This Consent Decree is conditioned upon full execution of the Settling
 27 Defendants' obligations in Paragraphs 29 through 33. If a Settling Defendant does
 28 not fully execute its obligations in Paragraphs 29 through 33, then this Consent
 Decree shall be voidable as to that Settling Defendant at the discretion of DTSC,

1 and DTSC may proceed to litigate the Complaint against the non-performing
2 Settling Defendants.

3 **VI. ACCESS TO INFORMATION AND THE PROPERTY**

4 35. Settling Defendant Frojen as trustee of the Frojen Trust shall provide
5 DTSC full access to the Property and fully cooperate with DTSC for response
6 activities, including, but not limited to, implementation of the FS/RAP and ongoing
7 operation and maintenance activities. Any sale of the Property by Settling
8 Defendant Frojen as trustee of the Frojen Trust shall include a requirement that all
9 purchasers of the Property shall provide DTSC full access to the Property and fully
10 cooperate with DTSC for response activities, including, but not limited to,
11 implementation of the FS/RAP and ongoing operation and maintenance activities.

12 33. Within thirty (30) days of the Effective Date, Settling Defendants shall
13 provide to DTSC copies of any and all unprivileged records, documents, and
14 information within its possession or control, or that of its agents, relating to the
15 ownership, operation, or control of the Property, including but not limited to design
16 specifications, reports of construction activities, contracts, invoices, sampling,
17 analysis, chain of custody records, manifests, trucking logs, receipts, reports,
18 sample traffic routing, correspondence, easements, permits, grants of access to
19 public property, city government resolutions, the ownership, operation, or control
20 of the Site, and the purchase, storage, use, handling, generation, treatment,
21 transportation, or disposal of Hazardous Substances in connection with the Site. If
22 Settling Defendant believes it already produced all such documents, it may comply
23 with this Paragraph by sending DTSC a signed letter representing and warranting
24 that it has already produced the information required by this paragraph. Sending
25 such a letter shall not absolve Settling Defendant of its obligations under this
26 Paragraph.

27 36. Settling Defendants may assert that certain documents, records, and other
28 information are privileged under the attorney client privilege or any other privilege

1 recognized by law. If Settling Defendants assert such a privilege, they shall provide
2 DTSC with the following information sufficient to test the assertion of the
3 privilege: (1) the title of the document, record, or information; (2) the date of the
4 document, record, or information; (3) the name and title of the author of the
5 document, record, or information; (4) the name and title of each addressee and
6 recipient of the document, record, or information; (5) a description of the subject of
7 the document, record, or information; and (6) the privilege asserted by Settling
8 Defendants. However, no documents, records, or other information created or
9 generated pursuant to the requirements of the Consent Decree shall be withheld on
10 the grounds that they are privileged. If a claim of privilege applies only to a portion
11 of a document, the document shall be provided to DTSC in redacted form to mask
12 the privileged information only. Settling Defendants shall retain all records and
13 documents they claim to be privileged until DTSC has had a reasonable opportunity
14 to dispute the privilege claim and any such dispute has been resolved in Settling
15 Defendants' favor.

16 37. If after the Effective Date Settling Defendant obtains or discovers any
17 records, documents or information described in Paragraph 35 not previously
18 provided to DTSC, Settling Defendant agrees to provide DTSC with copies of the
19 additional records, documents or information within ten (10) Days of the date
20 Settling Defendant discovers or obtains the records, documents or information.

21 **VIII. COVENANT NOT TO SUE BY PLAINTIFFS**

22 38. Except as expressly provided in Section IX (Plaintiffs' Reservation of
23 Rights) of this Consent Decree, Plaintiffs covenant not to sue Settling Defendants
24 and their representatives, affiliates, successors, heirs, legatees, and assigns for civil
25 liability for reimbursement of all or any portion of past or future Response Costs,
26 declaratory relief, injunctive relief, or any other judicial or administrative action or
27 relief pursuant to section 107 of CERCLA, 42 U.S.C. § 9607, the Resource
28 Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., the Carpenter

1 Presley Tanner Hazardous Substance Account Act, California Health and Safety
 2 Code section 25300 et seq., or the California Hazardous Waste Control Act,
 3 California Health and Safety Code section 25100 et seq., or nuisance or trespass,
 4 with regard to releases or threatened releases of hazardous substances related to the
 5 Site, whether known or unknown. This Covenant Not to Sue shall be revoked and
 6 deemed not effective if Settling Defendants fail to fully perform on their obligations
 7 stated in Paragraphs 29 through 33 of this Consent Decree.

8 35. This Covenant Not to Sue is that of Plaintiffs only and nothing in this
 9 Consent Decree is intended to, or shall, affect the rights of any other agency, board,
 10 department, or other entity of the State of California.

11 **IX. PLAINTIFFS' RESERVATION OF RIGHTS**

12 39. Claims Regarding Other Matters. Plaintiffs reserve, and this Consent
 13 Decree is without prejudice to, all rights, claims, and causes of action Plaintiffs may
 14 have against Settling Defendants with respect to all matters not expressly included
 15 within Plaintiffs' Covenant Not to Sue (Section VIII), including, but not limited to,
 16 releases or threatened releases of Hazardous Substances at, in, or from locations
 17 other than the Site.

18 40. Reservation of Claims. Plaintiffs reserve, and this Consent Decree is
 19 without prejudice to, all rights and claims against Settling Defendants with respect
 20 to the following matters:

- 21 a. Failure of a Settling Defendant to meet the requirements of this
 22 Consent Decree;
- 23 b. Damage to natural resources, as defined in CERCLA section
 24 101(6), 42 U.S.C. § 9601(6), including all costs incurred by any
 25 natural resources trustees;
- 26 c. Liability resulting from Settling Defendants' introduction of any
 27 hazardous substance, pollutant, or contaminant to the Site after
 28 the Effective Date;

- d. Liability resulting from acts by Settling Defendants after the Effective Date that cause the exacerbation of the hazardous substance conditions existing at or from the Site;
- e. Claims based on liability arising from the past, present, or future disposal of hazardous substances at sites or locations other than the Site;
- f. Claims based on the alleged misrepresentation or omission of material facts by Settling Defendants leading to the entry of this Consent Decree; and
- g. Claims based on criminal liability.

41. Government Authority. Except as expressly provided in this Consent Decree, nothing in this Consent Decree is intended nor shall it be construed to preclude DTSC from exercising its authority under any law, statute, or regulation. Furthermore, nothing in this Consent Decree is intended, nor shall it be construed, to preclude any other state agency, department, board, or entity from exercising its authority under any law, statute, or regulation.

42. Claims Against Other Persons. Plaintiffs reserve, and this Consent Decree is without prejudice to, all rights, claims, and causes of action Plaintiffs may have against any person or entity other than the Settling Defendants and the Settling Defendants' representatives, affiliates, successors, heirs, legatees, and assigns. Nothing in this Consent Decree is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, which DTSC may have against any person or other entity not a signatory to this Consent Decree.

43. Unknown Conditions/New Information. Notwithstanding any other provision in the Consent Decree, Plaintiffs reserve, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order seeking to compel Settling

Defendants to perform additional response activities at the Site and/or to reimburse Plaintiffs for additional Response Costs if:

- a. After the Effective Date of the Consent Decree, Plaintiffs receive information, previously unknown to Plaintiffs, indicating that the information provided by Settling Defendants regarding their involvement at the Site, and upon which Plaintiffs relied upon in entering into the Consent Decree, is false, or in a material respect, inaccurate.
- b. Conditions previously unknown to Plaintiffs, for which Settling Defendants are liable under any statute or law, are discovered at the Site after the Effective Date, and these previously unknown conditions indicate that a hazardous substance has been or is being released at the Site or there is a threat of such release into the environment.

X. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

44. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against Plaintiffs or their contractors, employees, or legal representatives for any costs or damages the Settling Defendants might incur or for any injuries or losses Settling Defendants might suffer as a result of their performance of the requirements of this Consent Decree. Settling Defendants further covenant not to sue and agree not to assert any claims or causes of action against DTSC or its contractors, employees, or legal representatives for any and all liability for reimbursement of all or any portion of the Settling Defendants' Response Costs, past or future, declaratory relief, injunctive relief or any other relief under CERCLA, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., the Carpenter Presley Tanner Hazardous Substance Account Act, California Health and Safety Code section 25300 et seq., or the California Hazardous Waste Control Act, California Health and Safety Code section 25100 et

1 seq. for liability with regard to releases or threatened releases of Hazardous
 2 Substances at, in, or from the Site.

3 **XI. EFFECT OF CONSENT DECREE AND CONTRIBUTION**
 4 **PROTECTION**

5 45. With regard to claims for contribution against Settling Defendants for
 6 “Matters Addressed” in this Consent Decree, the Parties agree and the Court finds
 7 as follows:

- 8 a. This Consent Decree constitutes a judicially approved settlement
 9 within the meaning of CERCLA section 113(f)(2), 42 U.S.C. §
 10 9613(f)(2).
- 11 b. This Consent Decree requires that Settling Defendants pay certain
 12 costs with respect to their liability at the Site.
- 13 c. Settling Defendants are entitled to the contribution protection
 14 provided by CERCLA section 113(f)(2), 42 U.S.C. § 9613(f)(2),
 15 and by state statutory and common law for the “Matters
 16 Addressed” in this Consent Decree, except for actions and claims
 17 identified in Section IX (Plaintiffs’ Reservation of Rights).
- 18 d. The “Matters Addressed” in this Consent Decree include: (1) all
 19 past and future Response Costs and all other damages (with the
 20 exception of natural resource damages) incurred by or on behalf
 21 of Plaintiffs with respect to the Site; (2) all past and future
 22 Response Costs that have been and/or may be incurred by or on
 23 behalf of any other person, including any past, present, or future
 24 Site owner or operator with respect to the Site; and (3) interest on
 25 amounts referred to in (1) and (2) above.

26 46. The protection provided for in this Section XI is conditioned upon full
 27 compliance by Settling Defendants with their obligations in this Consent Decree.
 28 Each Settling Defendant shall receive the protection provided for in this Section XI

1 when that Settling Defendant has fully complied with its obligations in this Consent
2 Decree.

3 47. Nothing in this Consent Decree limits or impairs the right of Plaintiffs to
4 pursue any other person for unrecovered Response Costs incurred by Plaintiffs.

5 **XII. NOTIFICATION**

6 48. Notification to or communication among the Parties as required or
7 provided for in this Consent Decree shall be addressed as follows:

8 For Plaintiffs:

9 Farah Itani
10 Project Manager
11 California Department of Toxic Substances Control
12 Cypress Regional Office
13 5796 Corporate Avenue
14 Cypress, CA 90630
15 Farah.Itani@dtsc.ca.gov

13 Christopher Kane
14 Staff Attorney
15 California Department of Toxic Substances Control
16 Office of Legal Counsel, MS-23A
17 1001 I Street
18 Sacramento, CA 95814
19 Chistopher.Kane@dtsc.ca.gov

17 Heather Lewis
18 Deputy Attorney General
19 California Department of Justice
20 1515 Clay Street
21 P.O. Box 70550
22 Oakland, CA 94612-0550
23 Heather.Lewis@doj.ca.gov

21 For Settling Defendant Frojen, individual and as trustee for the Frojen Trust.:

22 Rick McNeil
23 Crowell & Moring LLP
24 3 Park Plaza, Suite 2000
25 Irvine, CA 92614
26 rmcneil@crowell.com

25 For Settling Defendants Winters and PCA Metal Finishing, Inc.:

26 Corrie Plant
27 Bick Law LLP
28 520 Newport Center Dr, Suite 750
Newport Beach, CA 92660
cplant@bicklawllp.com

1 49. Upon ten (10) Days' notice to the other Party, a Party to this Consent
2 Decree may substitute another person for an addressee named above to receive
3 notifications or communications as required or provided for in this Consent Decree.

4 **XIII. GENERAL PROVISIONS**

5 50. Parties Bound. This Consent Decree shall apply to, be binding upon, and
6 inure to the benefit of the Parties and their respective representatives, successors,
7 heirs, legatees, and assigns.

8 51. Parties Not Bound. This Consent Decree shall not apply to, be binding
9 upon, or inure to the benefit of any party other than the Parties bound as provided in
10 Paragraph 50. This Consent Decree shall not apply to, be binding upon, or inure to
11 the benefit of the United States Environmental Protection Agency.

12 52. No Rights in Other Parties. Except as provided in Paragraph 50 regarding
13 parties bound, nothing in this Consent Decree shall be construed to create any rights
14 in, or grant any cause of action to, any person not a Party to this Consent Decree.

15 53. No Waiver of Enforcement. Plaintiffs' non-enforcement any provision of
16 this Consent Decree shall in no way be deemed a waiver of such provision or in any
17 way affect the validity of this Consent Decree. Plaintiffs' non-enforcement of any
18 such provision shall not preclude it from later enforcing the same or any other
19 provision of this Consent Decree.

20 54. No Findings by Plaintiffs. The statements of fact set forth in this Consent
21 Decree are not intended to constitute a finding by Plaintiffs as to the risks to human
22 health or the environment that may be posed by contamination at the Site or
23 whether or not a nuisance condition exists at the Site. This Consent Decree does not
24 constitute a representation by Plaintiffs that the Site, or any part thereof, is fit for
25 any particular purpose.

26 55. Governmental Immunity. Nothing herein is intended, nor shall be
27 construed, to limit, impair, or prejudice the governmental tort, statutory, or
28

1 sovereign immunities available to Plaintiffs under applicable law for their oversight
2 or other activities with respect to the Site.

3 56. Integration. This Consent Decree, including the exhibits and other
4 materials incorporated herein by reference, constitutes the entire agreement
5 between Plaintiffs and Settling Defendants and may not be amended or
6 supplemented except as provided for in the Consent Decree.

7 57. Modifications. This Consent Decree may only be modified upon the
8 written agreement of Plaintiffs and Settling Defendants and the approval of the
9 Court, or upon order of the Court after noticed motion by a Party to this Consent
10 Decree.

11 58. Interpretation. The Consent Decree is entered into and shall be construed
12 and interpreted in accordance with the laws of the State of California and, where
13 applicable, the laws of the United States. This Consent Decree shall be deemed to
14 have been drafted equally by all Parties hereto.

15 59. Signatories. Each signatory to this Consent Decree certifies that he or she
16 is fully authorized by the Party he or she represents to enter into the terms and
17 conditions of this Consent Decree, to execute it on behalf of the Party represented,
18 and to legally bind that Party to all the terms and conditions of this Consent Decree.

19 60. Counterparts. This Consent Decree may be executed in two or more
20 counterparts by the Parties, each of which shall be deemed an original, but all of
21 which together shall constitute one and the same instrument.

22 61. Attorneys' Fees and Costs. Each Party to this Consent Decree shall bear
23 its own costs, attorneys' fees, expert witness fees, and all other costs of litigation;
24 provided, however, that if Plaintiffs bring an action against Settling Defendants to
25 enforce this Consent Decree, and are successful in such action, Settling Defendants
26 shall reimburse Plaintiffs for all costs of such action, including, but not limited to,
27 attorneys' fees. This paragraph shall have no effect on the Parties' right to recover
28 these fees or costs from any third person not a party to this Consent Decree.

1 62. Agent. Settling Defendants have appointed and authorized the agents
2 identified in Paragraph 48 to receive notices with respect to all matters arising
3 under or relating to this Consent Decree.

4 **XIV. ENTRY OF THE CONSENT DECREE**

5 63. This Consent Decree shall be lodged with the Court for a period of not
6 less than thirty (30) Days. The Consent Decree also is subject to a public comment
7 period of not less than thirty (30) Days. Plaintiffs may modify or withdraw their
8 consent to this Consent Decree if comments received during the public comment
9 period disclose facts or considerations that indicate that this Consent Decree is
10 inappropriate, improper, or inadequate. Settling Defendants consent to the entry of
11 this Consent Decree without further notice.

12 64. If Plaintiffs do not modify or withdraw their consent after the public
13 comment period is completed, Plaintiffs will move the Court for an order approving
14 the Consent Decree. If, for any reason, the Court declines to approve this Consent
15 Decree in the form presented, this agreement is voidable at the sole discretion of
16 any Party and the terms of the Consent Decree may not be used as evidence in any
17 litigation between the Parties.

18
19 **IT IS SO ORDERED, ADJUDGED, AND DECREED**

20
21 DATED: November 10, 2022

22 
23 _____
24 Honorable Dale S. Fischer
25 UNITED STATES DISTRICT JUDGE
26
27
28